

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
RONALD DALE BANTAM,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 80-111

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of a \$250 civil penalty for outdoor burning allegedly in violation of respondent's Section 8.02(3) of Regulation I, having come on regularly for formal hearing on October 21, 1980, in Seattle, Washington, and appellant Ronald Dale Bantam appeared for himself, and respondent Puget Sound Air Pollution Control Agency appeared through its attorney Keith D. McGoffin, with Nat W. Washington presiding, and having reviewed the Proposed Order of the presiding officer mailed to the parties on the 29th day of October, 1980, and more than twenty days having

1 elapsed from said service; and

2 The Board having received no exceptions to said Proposed Order
3 and the Board being fully advised in the premises; NOW THEREFORE,

4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
5 Order containing Findings of Fact, Conclusions of Law and Order
6 dated the 29th day of October, 1980, and incorporated by reference
7 herein and attached hereto as Exhibit A, are adopted and hereby
8 entered as the Board's Final Findings of Fact, Conclusions of Law
9 and Order herein.

10 DATED this 19th day of February, 1981.

11 POLLUTION CONTROL HEARINGS BOARD

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13 Nat W. Washington
14 NAT W. WASHINGTON, Chairman

15 David Akana
16 DAVID AKANA, Member

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PROPOSED FINDINGS OF
FACT, CONCLUSIONS OF
LAW AND ORDER

This matter, the appeal of a \$250 civil penalty for outdoor burning allegedly in violation of respondent's Section 8.02(3) of Regulation I came on for hearing before the Pollution Control Hearings Board on October 21, 1980, at Seattle, Washington. Nat W. Washington, the only member of the Board in attendance, presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230. Appellant appeared for himself. Respondent appeared by its attorney Keith D. McGoffin.

Witnesses were sworn and testified. Exhibits were examined.

EXHIBIT A

CERTIFICATION OF MAILING

I, Janet L. Huff, certify that I mailed, postage prepaid, copies of the foregoing document on the 19th day of February, 1981, to each of the following-named parties at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Ronald Dale Bantam
1521-118th NE
Marysville, WA 98274

Keith D. McGoffin, Attorney
Roval, McGoffin & Turner
818 South Yakima Avenue
Tacoma, WA 98405

Ronald Busby
Enforcement Officer
PSAPCA
P. O. Box 9863
Seattle, WA 98109



JANET L. HUFF
POLLUTION CONTROL HEARINGS BOARD

1 From the testimony heard and exhibits examined, the Pollution Control
2 Hearings Board makes these

3 FINDINGS OF FACT

4 I.

5 Respondent, pursuant to RCW 43.21B.260 has filed with this Board a
6 certified copy of its Regulation I containing respondent's regulations
7 and amendments thereto.

8 II.

9 On May 7, 1980, respondent's inspector responding to a citizen
10 complaint went to 1521-118th NE, Marysville, Washington, and found an
11 outdoor fire containing rubber tires on the premises. The property
12 was owned by Dale V. Bantam.

13 III.

14 Dave Bantam, the son of Dale V. Bantam, was present on the
15 premises when the inspector arrived. Neither the owner nor the
16 appellant Ronald Dale Bantam was present on the premises while the
17 inspector was there.

18 IV.

19 Dave Bantam told the inspector that Ronald Dale Bantam was the
20 owner of the property, however, a check of the records in the office
21 of the Assessor of Snohomish County indicated that as of December 31,
22 1979, the owner of the property was Dale V. Bantam. There is an
23 inference that when a condition or state of affairs has been shown to
24 exist, it may be inferred in the absence of proof to the contrary,
25 that the condition or state of affairs continued to exist. Jones,
6 Evidence--Civil and Criminal, Sec. 3:82 (Sixth Edition), and Wigmore,

27 FINDINGS OF FACT,
CONCLUSIONS OF
LAW AND ORDER

1 On Evidence, Sec. 437 (3rd edition). This inference was not overcome
2 by the out-of-court hearsay statement of Dave Bantam, who is the
3 brother of the appellant. The appellant gave hearsay testimony that
4 on May 6, which was the day before the incident in question, Dale V.
5 Bantam executed a deed to the appellant, who is his son. Appellant
6 further testified that he had no knowledge of this transaction and did
7 not receive the deed itself until May 9, 1980, the day after the
8 incident involved here. Although the appellant testified that he had
9 no knowledge concerning the fire in question, he did testify that his
10 father Dale V. Bantam had been in the business of collecting old tires
11 capable of being recapped and that he frequently burned tires on the
12 premises.

13 V.

14 The appellant received a formal notice of violation citing
15 violation of respondent's section 80.02(3) of regulation I imposing a
16 civil penalty of \$250. From this, appellant appealed.

17 VI.

18 Any conclusion of law herein actually cited which should be deemed
19 a Finding of Fact is hereby adopted as such.

20 From these Findings, the Pollution Control Hearings Board comes to
21 these

22 Conclusions of Law

23 I.

24 On the 7th day of May, 1980, the appellant was not the owner of
25 the property on which the fire was burning. Therefore, it cannot be
26 presumed that he was the person who allowed the outdoor fire.

27 II.

1 Even had the appellant been the owner of the property, he cannot
2 be held to have been in violation of section 8.02(3) since there is no
3 evidence that he had any knowledge whatsoever concerning the fire.
4 Puget Sound Air Pollution Control Agency v. Kaiser Aluminum and
5 Chemical Corporation., 25 Wash. App. 273 (1980).
6

7 III.

8 The \$250 civil penalty should be vacated as to the appellant, but
9 should remain in full force and effect as it relates to Dave Bantam
10 and Dale V. Bantam who are named in the notice and order of civil
11 penalty but did not appeal.

12 IV.

13 Any Finding of Fact which should be deemed a Conclusion of Law is
14 hereby adopted as such. From these conclusions the Pollution Control
15 Hearings Board makes this

16 ORDER

17 The \$250 civil penalty is vacated as to the appellant
18 Ronald Dale Bantam, who is named in the notice and order of civil
19 penalty as Mr. Ron Bantam.

20 DATED this 29th day of October, 1980.

21 POLLUTION CONTROL HEARINGS BOARD

22
23 Nat W. Washington
24 NAT W. WASHINGTON
25 Presiding Officer

26 FINDINGS OF FACT,
27 CONCLUSIONS OF
LAW AND ORDER